IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.2180 OF 2004

Shri. Mahadeo Pirappa Banne ...Petitioner (Org.Defendant)

V/s

Shri. Narsinh Tirthpati Joshi ...Respondent

WITH

SECOND APPEAL NO.508 OF 2004

Shri. Mahadeo Pirappa Banne ...Applicant (Org.Plaintiff)

V/s

Shri. Narsinh Tirthpati Joshi & Ors...Opponents (Org. Defendants)

Shri. A.A.Kumbhkoni with Shri. A.M.Kulkarni for the Petitioner/Appellant.
Shri.Anilkumar K. Patil for the Respondents/Opponents.

CORAM : ABHAY S. OKA, J.
DATE ON WHICH JUDGMENT IS RESERVED : 6TH MAY, 2005.
DATE ON WHICH JUDGMENT IS PRONOUNCED: 9TH JUNE, 2005.

JUDGMENT :

1. The Writ Petition and the Second Appeal can be conveniently disposed of by a common judgment. For the sake of convenience, the parties are referred to with reference to their status in the Writ Petition. With a view to appreciate the rival submissions made before me, it will be necessary to refer to the facts of the case.

2. The dispute is in respect of the premises admeasuring 10.5 feet X 5 feet out of C.T.S. Nos.303, 303/1 and 303/2 situate at Gaonbhag, Sangli and more

particulary described in paragraph No.1 of the plaint in Regular Civil Suit No.4489 of 1995 filed by the Respondent. The said premises admeasuring 10.5 feet X 5 feet is hereinafter referred to as 'the suit premises'. The Petitioner has disputed the description of the suit premises by contending that the width thereof is 8 feet.The suit premises is a shop in respect of which the Petitioner is the tenant of the Respondent. The Respondent filed the Regular Civil Suit No.4489 of 1995 in the Court of the Civil Judge, Junior Division, Sangli for eviction of the Petitoner from the suit premises. The case of the Respondent is that by notice dated 25th September 1984, the Sangli Municipal Council called upon the Respondent to demolish the building in which the suit premises are situated on the ground that the building had become dilapidated and dangerous. After receipt of the said notice, the Respondent demolished the Southern portion of the said bulding and constructed two blocks. Subsequently, the Respondent demolished the portion of the building on the Western and Southern side of the suit premises and made a new construction thereon. The Municipal Council issued a fresh notice dated 11th August 1995 calling upon the Respondents to demolish the building in which the suit premises are situated. A copy of the said notice was also sent to the Petitioner. The Petitioner filed a Civil Suit against the Respondent and four others for injunction restraining the Respondent and others from evicting the Petitioner from the suit premises. Thereafter, the Respondent filed the aforesaid Regular Civil Suit

No.4489 of 1995 by invoking the provisions of Section 13(1)(hhh) and Section 13(1)(g) of the Bombay Rent Act, 1947.

3. The said suit filed by the Respondent was contested by the Petitioner by adopting the reply filed to the application for temporary injunction as his Written Statement. The contention of the Petitioner is that the Respondent got the notice issued from the Municipal Council by contacting the concerned Officer of the Municipal Council. The Petitioner pointed out that he has no other premises available and he has no other source of earning save and except the business conducted in the suit premises. The learned Trial Judge dismissed the suit filed by the Respondent. The learned Trial Judge held that the Respondent has failed to prove that he requires the suit premises for the purpose of immediate demolition as ordered by the Local Authority. The Trial Court also held that the Respondent has failed to establish his case of bonafide requirement. An appeal was peferred by the Respondent to the District Court for challenging the judgment and decree of the Trial Court. By judgment and decree dated 20th December, 2003 learned IIIrd Additional District Judge, Sangli allowed the appeal preferred by the Respondent. The learned Additional District Judge held that the Respondent requires the suit premises for the purpose of immediate demolition as directed by the Local Authority within the meaning of Section 13(1)(hhh) of the Bombay Rent Act, 1947. The learned Additional District

Judge,however, confirmed the finding of the Trial Court on the issue of bonafide requirement of the Respondent-landlord. The present Writ Petition is filed by the Petitioner for challenging the decree of eviction passed by the Appellate Court.

4. The suit filed by the Petitioner for injunction was decreed by the Trial Court on 29th September, 2000 and the learned Trial Court directed the Respondents in the Second Appeal not to remove the construction of the suit premises, not to cause damage to the suit premises and not to cause any new construction over the suit property. The decree passed by the Trial Court in favour of the Petitioner in the said suit was challenged by the Respondent by preferring an appeal to the District Court. By judgment and decree dated 20th December, 2003 the learned IIIrd Additional District Judge, Sangli allowed the appeal preferred by the Respondent and dismissed the suit filed by the Petitioner. The Second Appeal No.508 of 2004 is filed by the Petitioner for challenging the said judgment and decree passed by the Trial Court.

5. On 5th May, 2004 this Court issued notice before admission in the Writ Petition. By a separate order, this Court also issued notice in the Second Appeal. In a common order passed by this Court in both the matters on 26th October, 2004 it was recorded by this Court that the settlement between the parties was possible. This Court recorded the statement of the learned counsel

appearing for the Respondent that the Respondent was likely to obtain the sanction to the building plan of one gala where he intends to accomodate the Appellant as per the understanding between the parties. On 3rd February, 2005, on 17th February, 2005,on 3rd March, 2005, on 21st April, 2005 and lastly on 6th May, 2005 these matters were argued before me. When the learned counsel appearing for the Petitioner brought to my notice the earlier order dated 26th October, 2004 passed by this Court in which the aforesaid statement of the learned counsel for the Respondent was recorded, the learned counsel appearing for the Respondent stated that due to attitude of the Petitioner it is no longer possible to settle the matter. Therefore, by oral order dated 3rd February, 2005 I directed the Respondents to file an affidavit explaining as to why the Respondent is not ready and willing to settle the dispute in terms of the statement recorded on 26th October 2004. Accordingly, an affidavit dated 11th February, 2005 has been filed by the Respondent No.4 in the Second Appeal. The Petitioner has filed affidavit dated 22nd February, 2005 by way of reply to the said affidavit of the Respondent No.4. In the affidavit of the Respondent No.4, it is stated that there were talks between the parties in which it was offerred to the Petitioner by the Respondent that the Petitioner will be accommodated in newly constructed gala either by letting out the gala to the Petitioner or by selling the gala outright to the Petitioner. It is stated in the affidavit that there was some discussion between the parties as regards the

amount of rent and/ or the sale consideration. It is stated that the Respondent was insisting that the plan of the gala offerred to him should be first sanctioned. It is stated in the affidavit that accordingly Respondent applied for building permission. However, the sons of the Petitioner visited the office of the Municipal Corportation and filed written complaint raising objection to the plan submitted by the Petitioner. It is stated in the affidavit that sons of the Petitoner raised an objection that as the matter was pending in the Court, the Corporation should not sanction the plan. It is stated that as a result, there was gross delay in getting the plans approved and the approval was granted only on 4th December, 2004. The Respondent has setout the conduct of one of the sons of the Petitioner in paragarph No.6 of the affidavit. It is stated that one advocate Shri.Kulkarni from Sangli was approached by the parties for appointing him as a mediator. However, the said advocate did not entertain the Respondent when he attempted to meet the advocate on more than one occassion. It is, therefore, stated that it was not possible for the Respondent to settle the matter. The Petitioner in his affidavit has denied each and every allegation made in the said affidavit of the Respondent No.4. It is stated that the Petitioner wants to back out from the compromise which is reflected in the order dated 26th October, 2004 passed by this Court.

6. After having perused the affidavits, I find that any concluded settlement or compromise between the parties

is not spelt out from the affidavit of the Petitioner. There is nothing on record to show that a newly constructed gala was to be alloted to the Petitioner on any specific terms and conditions which were agreed upon by and between the parties. The learned counsel appearing for the Respondent in the Writ Petition stated that though there is no compromise between the parties. Considering the fact that the Petitioner is more than 75 years old the Respondent will not execute the decree of possession during the lifetime of the Petitioner. The said statement made by the learned counsel appearing for the Respondent in the Writ Petition as well as the Respondents in the Second Appeal is accepted. However, learned counsel for the Petitioner stated that the said suggestion is not acceptable to the Petitioner and, therefore, matters may be heard on merits. Accordingly, I have heard the counsel appearing for the parties on merits.

7. The learned counsel appearing for the Petitioner submitted that the very fact that the suit premises have survived from the year 1995 till today shows that the suit premises were not required to be immediately demolished. He submitted that only minor repairs were required to be carried out to the suit premises and the petitioner had shown readiness and willingness to carryout the repairs. He pointed out that by deliberately delaying the talks of settlement between the parties before the institution of the suit for eviction, the Respondent damaged the suit premises by

removing roof of Shahabadi tiles of the first floor. He submitted that the notices were issued by the Municipal Council in collision with the Respondent and at the instance of the Respondent. He submitted that there were discrepencies in the notices issued by the Municipal Council. He pointed out that the witness examined by the Respondent who was the officer of the Municipal Corporation admitted that he visited the suit premises without verification of the records and without giving notice to the parties. He submitted that the notices were issued by the Municipal Authorities without inspecting the building. He submitted that the age of the Petitioner is 80 years and his only source of livelihood was the laundary business carried by him in the suit premises.

8. The learned counsel appearing for the Respondent submitted that the entire building had become dangerous and except the suit premises the other part of the building has been demolished by the Respondent on the basis of notices issued by the Municipal Corporation. He submitted that the findings recorded by the Appellate Court are essentialy findings of fact and, therefore, no interference was called for.

9. I have considered the rival submissions. The Appellate Court has referred to the evidence of Shri. P. R. Pandav examined by the Respondent. The said Shri. Pandav is an engineer in the employment of the Municipal Corporation. The Appellate Court noted that

the said witness deposed that the Eastern wall of the suit premises is damaged to the extent of 75 per cent. The wintess deposed that the Western wall of the suit premises has developed cracks and is about to fall. The said witness stated that after having inspected the roof of the suit premises he found that the wooden battens of the said roof were hanging without any support and due to rain water the wooden beams have become rotten and premises may collapse any time. The Appellate Court has given reasons for accepting the evidence of Shri. Pandav. The learned Appellate Court recorded a finding of fact that evidence of Shri. Pandav on the nature of the suit premises needs to be accepted. The learned Appellate Court held that there was no evidence adduced by the Petitioner to show that the suit premises were either damaged or demolished by the Respondent. The Appellate Court considered the evidence of a neighbour on the point of condition of the suit premises. The Appellate Court has considered the exhibited photographs of the suit premises on record. The Appellate Court has relied upon the evidence of P.W.3 Adgona Patil. The learned Appellate Court accepted the evidence of the said witness by observing that his relationship with both the parties was very cordial. The said witness deposed that he had complained to the Municipal Authorities. The learned Appellate Court found that photographs on record were properly proved by examining the photographers. After having considered the evidence on record, in paragraph No.20 of the judgment, the Lower Appellate Court held that ground under Section

13(1)(hhh) of the Bombay Rent Act, 1947 has been established.

10. It is true that witness Shri. Pandav, an engineer of the Municipal Corporation had not issued notice before inspecting the suit premises. It is to be borne in mind that the said engineer is a Public Officer. There is nothing on record to show that the said Officer had any bias against the Petitioner. Failure of the Officer to give notice to the parties is not the ground on which the evidence of the said engineer on the condition of the suit premises can be discarded.

11. It is pertinent to note here that in the suit filed by the Petitioner against the Respondent, the Local Authority,i.e., Municipal Corporation was not impleaded as a party.

12. Once it is found that there is an evidence on record in form of evidence of Shri. Pandav that the suit premises was in dilapidated condition and substantial part of it was in dangerous condition, the fact that the suit premises have not collapsed during last 10 years is not a ground to interfere with the decree passed under Section 13(1)(hhh) of the Bombay Rent Act, 1947. It is to be borne in mind that save and except the suit premises the remaining part of the old building has been demolished and a new structure is already errected. In my view no fault can be found with the decree passed by the Appellate Court under Section

13(1)(hhh) of the Bombay Rent Act, 1947.

13. If the Respondent is held entitled to the decree of eviction, surely decree of injunction passed in favour of the Petitioner by the Trial Court could not have been confirmed by the Appellate Court. While allowing the appeal preferred by the Respondent for challenging the decree of injunction passed by the Trial Court, the first Appellate Court held that the dilapidated condition of the suit premises is not denied by the Petitioner and the dilapidated nature of the suit premises is borne out from the evidence on record.

14. There is no reason to interfere with decree of possession passed by the Appellate Court in the Petition under Art.227 of the Constitution of India. In so far as the Second Appeal is concerned there are findings of fact recorded by the Appellate Court. The said findings of fact are based on evidence on record and there is no perversity in the said findings. Considering the finding of the Appellate Court that even the Petitioner has not disputed that the suit premises are in dilapidated condition and that the Petitioner has failed to prove that the Respondent caused damage to the building, no interference can be made in the Second Appeal under Section 100 of the Code of Civil Procedure, 1908 as the said finding is a finding of fact based on legal evidence. Therefore, there is no merit in the Second Appeal.

15. The present age of the Petitioner is stated to be 80 years. Considering the advanced age of the Petitioner, the Respondent has stated that the Petitioner will not be evicted during his lifetime. There is a finding of fact recorded by the Appellate Court that there is a risk involved in occupying the suit premises. Therefore, if decree of possession is directed not to be executed during the lifetime of the Petitioner, the Petitioner will have to give an undertaking to this Court that he will occupy the suit premises at his own risk.

15. Hence, I pass the following order:

: O R D E R :

1. The Writ Petition and the Second Appeal are dismissed with no orders as to costs.

2. Notwithstanding the dismissal of the Writ Petition, the Respondent in the Writ Petition will not execute the decree for possession during the life time of the Petitioner provided the Petitoner files an undertaking in this Court within a period of two weeks from today that he will occupy the suit premises at his own risk knowing fully well that the suit premises are in dilapidated condition. If the Petitioner fails to file such undertaking within the stipulated period, the decree for possession will become executable forthwith.

3. Parties to act on an authenticated copy.

JUDGE